

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re
BOZEL, S.A., *et al.*,

Chapter 11 - Confirmed
Case No. 10-11802 (JMP)

Debtors.

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TRILLIANT FUNDING, INC., as Plan
Administrator of Bozel, S.A. and Bozel LLC,

Adv. Proc. No. 12-01873 (JMP)

Plaintiff,

-against-

WHM LLC d/b/a LXR Luxury Resorts
and/or Boca Raton Resort & Club,

Defendant.

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STIPULATION OF SETTLEMENT

This Stipulation of Settlement (the "Stipulation") is made as of January 23, 2013 by and between plaintiff Trilliant Funding, Inc., as Plan Administrator (the "Plan Administrator") of Bozel S.A. and Bozel LLC (together, the "Debtors"), and defendant WHM LLC d/b/a LXR Luxury Resorts and/or Boca Raton Resort & Club ("WHM"), by and through their respective undersigned attorneys:

WHEREAS, on April 6, 2010, Bozel S.A. filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"); and

WHEREAS, on January 5, 2011, Bozel LLC filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court; and

WHEREAS, by Order entered on February 9, 2012 (the "Confirmation Order"), the Bankruptcy Court confirmed the Debtors' Amended Joint Plan of Liquidation, dated December 27, 2011 (the "Plan"); and

WHEREAS, pursuant to the Plan and Confirmation Order, all claims, rights and/or causes of action belonging to Bozel LLC, including all asserted and unasserted causes of action arising under chapter 5 of the Bankruptcy Code, were transferred to Bozel, S.A.; and

WHEREAS, pursuant to the Plan and Confirmation Order, together with a certain Amended Plan Administrator Agreement dated as of February 2, 2012, Trilliant Funding was appointed as "Plan Administrator" and thereby succeeded to the rights and obligations of the Debtors as set forth in the Plan; and

WHEREAS, between April 29, 2008 and April 14, 2010, Bozel LLC paid or otherwise transferred cash amounts totaling \$23,330.00 to or for the benefit of WHM (the "Transfers"); and

WHEREAS, on September 14, 2012, the Plan Administrator commenced this adversary proceeding against WHM seeking the return and repayment of the Transfers or the value thereof on the basis that, among other things, said Transfers were allegedly subject to avoidance and recovery as a fraudulent conveyances pursuant to §§544, 548, 550 and 551 of the Bankruptcy Code and/or §§273, 274, 275 and 276 of the New York Debtor and Creditor Law; and

WHEREAS, WHM, with the assistance of counsel, has disputed the Plan Administrator's alleged entitlement to avoid and/or recover the Transfers or the value thereof; and

WHEREAS, in light of the issues presented and in order to avoid the cost of litigation and the risks attendant thereto, the Plan Administrator and WHM have determined to resolve this adversary proceeding upon the terms, conditions and provisions of this Stipulation; and

WHEREAS, the Plan Administrator and WHM have carefully considered the terms of this Stipulation and are satisfied that it is fair and reasonable.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Plan Administrator and WHM do hereby stipulate and agree as follows:

1. In full and final settlement of this adversary proceeding, WHM agrees to pay to the Plan Administrator, and the Plan Administrator agrees to accept, the sum of \$16,500.00 (the "Settlement Amount").

2. The Settlement Amount shall be paid by (i) check or money order made payable to "Trilliant Funding, Inc., as Plan Administrator" and shall be forwarded to Pick & Zabicki LLP, 369 Lexington Avenue, 12th Floor, New York, New York 10017, Attn: Eric C. Zabicki, Esq., or (ii) wire transfer to Pick & Zabicki LLP on behalf of Trilliant Funding, Inc., Plan Administrator, so as to be received within ten (10) days of WHM's execution of this Stipulation.

3. Upon payment of the Settlement Amount, and except with regard to the settlement described herein, the Plan Administrator, the Debtors and their estates and creditors, and WHM, and their predecessors, successors, parents assigns, affiliates, officers, directors, employees, contractors, subcontractors, shareholders, partners, agents, representatives, parents, divisions, subsidiaries, insurers, guarantors, and attorneys hereby release and discharge one another from any and all actions, causes of action, expenses, claims, suits, debts, judgments, damages and demands of any kind existing or arising prior to the execution of this Stipulation, including any and all claims arising under chapter 5 of the Bankruptcy Code to the broadest extent permissible under the plan documents.

4. In the event that WHM fails to comply with the terms of this Stipulation, the Plan Administrator may declare the same void and neither the terms nor statements contained in this Stipulation or any correspondence related to the negotiation, drafting or approval of this Stipulation, shall be argued to be nor deemed to be an admission against either party's interest in any litigation by and between the parties.

5. The parties hereby acknowledge that, pursuant to and in accordance with the Plan, the Confirmation Order and the Plan Administrator Agreement, this Stipulation and the settlement described herein shall be deemed approved as if by Order of the Bankruptcy Court upon the payment of the Settlement Amount.

6. The Plan Administrator and WHM represent and warrant to each other that they are authorized and entitled to enter into and execute this Stipulation, and bind themselves and all persons and entities to be so bound, and they each represent and warrant that they are the sole owner of, and have not sold, pledged, hypothecated, assigned or transferred, the claims being released herein.

7. The Plan Administrator and WHM acknowledge that this Stipulation is a compromise of a disputed claim, and that neither admits, and each expressly denies any liability on its part.

8. This Stipulation contains the entire agreement between the parties, and may only be modified in writing signed by the parties or their duly appointed agents.

9. Each party acknowledges that they have read all of the terms of this Stipulation and enters into this Stipulation's terms voluntarily and without duress.

10. This Stipulation shall be deemed to have been jointly drafted by the parties and, in construing and interpreting this Stipulation, no provision shall be construed and/or interpreted for or against any of the parties because such provision, or any other provision, or the Stipulation as a whole, was purportedly prepared or requested by such party.

11. This Stipulation may be executed in counterparts, with each part being deemed a part of the original document.

12. This Stipulation may be signed by facsimile or e-mail scan transmission which signatures shall be treated as original signatures.

13. This Stipulation shall be binding upon the parties' successors and assigns, including any subsequently appointed trustee or other fiduciary, and shall inure to the benefit of the parties' successors and assigns. All references herein to the Plan Administrator and/or WHM shall be deemed to include their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Stipulation as of the day and year first above written.

PICK & ZABICKI LLP

Counsel to the Plan Administrator-Plaintiff

By: 

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WHM LLC/LXR LUXURY RESORTS

Defendant

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